In the High Court of Judicature at Madras

Dated: 15.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.4027 of 2003

D.Isaac Jebakumar ..Appellant/Petitioner

..vs..

1. The Government of Tamil Nadu,
   rep.by the Commissioner and
   Secretary to Government,
   Housing & Urban Development Dept.,
   Fort St.George,
   Chennai-600 009.

2. The Tamil Nadu Housing Board,
   rep.by its Chairman & Managing Director,
   Nandanam,
   Chennai-600 035. ..Respondents/Respondents

Writ Appeal filed under Clause 15 of the Letters Patent, against the Order dated 14.10.2003 and passed in W.P.No.14594 of 1995 presented under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus to quash the letter No.5395/HB.1 (2)/ 92-14 dated 7.02.1994 issued by the first respondent after calling for the concerned records from him and consequently direct the respondents to revise the petitioner's pay in the post of Community Officer and Community Development Officer and subsequent promotions on par with the scale of Rs.1820-3200-2200-4000 (Selection Grade) and Rs.2200-4000 respectively from the dates they were revised in MMDA with all attendant benefits of arrears and allowances etc., to the petitioner.

For Appellant : Ms.AL.Gandhimathi

For Respondents : Mr.A.Edwin Prabhakar,
Govt.Advocate for R1
Mr.K.Chelladurai for R2

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.,)

The above Writ Appeal is directed against the Order of the learned single Judge dated 14.10.2003 made in W.P.No.14594 of 2005, in and by which, the learned Judge, rejecting the stand taken by the petitioner, dismissed his writ petition.

2. Heard the learned counsel appearing for the appellant as well as the respondents.

3. For convenience, we shall refer the parties, as described in the writ petition. According to the petitioner, he was appointed on 12.10.1978 as Social Worker (now being known as "Community Officer") in the Madras Metropolitan Development Authority (now Chennai Metropolitan Development Authority; for short 'CMDA'). By virtue of the Government Order dated 21.10.1980, the Community Development Wing formed by the CMDA was bifurcated and transferred into the Tamil Nadu Housing Board and Tamil Nadu Slum Clearance Board. There were two posts of Community Officers in the Tamil Nadu Housing Board. The petitioner had been issued with an Order dated 25.02.1981 by the Housing Board transferring his service from CMDA to the Housing Board. At that time, there was no Service Rules or Regulation framed either by CMDA or Housing Board. Only on 01.03.1984, both the Bodies were permitted to frame Service Rules subject to the approval of the Government.

4. It is the grievance of the petitioner that the persons similarly placed in CMDA doing the same nature of work, are drawing higher scale of pay at Rs.1820-60-2300-75-3200, whereas the petitioner was getting Rs.1600-2600. He made a representation to the Housing Board to revise his scale of pay at Rs.1820-3200 prevailing in CMDA. According to the petitioner, though the Housing Board recommended his case, that was turned down by the Government in their Order dated 07.02.1994. The said Government Order shows that the duties and responsibilities of the post of the Community Officer in the Housing Board and CMDA are different. The reason given by the Government is factually incorrect and questioning the order of the Government dated 07.02.1994, the petitioner filed a writ petition in W.P.No.3422 of 1989. Before the learned single Judge, the 1st respondent and the 2nd respondent Tamil Nadu Housing Board filed a separate counter affidavit, contending that after transfer to Tamil Nadu Housing Board and after approval of the Rules and Regulations framed, the petitioner is governed only by the said Rules. It is also stated that the duties and responsibilities in the post of Community Officer in Tamil Nadu Housing Board and CMDA are different. In other words, according to them, though the post is one and the same, the nature of work being

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performed at Housing Board is less onerous.

5. The learned Judge, considering the specific stand taken by the Government and the Housing Board and after adverting to various decisions of the Supreme Court, refused to accept the stand taken by the petitioner and dismissed the writ petition, hence, the present writ appeal.

6. Learned counsel appearing for the petitioner / appellant raised the very same contentions before us. It is not in dispute that after bifurcation, the petitioner was transferred to Tamil Nadu Housing Board as Community Officer. It is also not in dispute that separate Rules and Regulations are applicable to the persons working in the Tamil Nadu Housing board. The learned Judge has referred to the duties and responsibilities of the Community Development Officer both in the Tamil Nadu Housing Board as well as CMDA. The said tabular form is available in para 6 of his Order. We also verified the same. In the counter affidavit by the Government as well as the Housing Board, both of them specifically asserted that the nature and responsibilities both in CMDA and Housing Board are different. Though qualifications prescribed for the post of the Community Officer both in the Tamil Nadu Housing Board and CMDA are one and the same, the materials placed show that the duties and responsibilities of the Community Officer in the Tamil Nadu Housing Board when compared to CMDA are lesser. In other words, the officers in the Tamil Nadu Housing Board are doing liaison work in implementing TNUDP , whereas in CMDA they are guiding the allottees in getting loans. In such circumstances, though the designation of the post, namely, Community Officer in both the Wings is one and the same, in the light of the different nature and responsibility and duties as well as different service conditions, Rules and regulations, we are unable to accept the stand taken by the petitioner / appellant.

7. It is not in dispute that Courts have taken a view that ordinarily the Courts should not try to delve deep into administrative reasons pertaining to pay fixation and parity as well as nature of work being performed. No doubt, learned counsel for the petitioner, relying on a decision of this Court reported in D.Rajagopalan ..vs.. Union of India and others (1985 (1) L.L.J.459) submitted that the petitioner is entitled to pay parity prevailing in CMDA. We have verified the factual details in the case that was considered by the Division Bench. It shows that in the case before the Division Bench, the Government itself accepted the identical duties and responsibilities between two categories of posts. In the light of the said factual information, the Division Bench accepted the case of the appellant therein and issued appropriate direction under the Principal of '*equal pay for equal work*'. In the case on hand, it is the consistent stand of the Government Order as well as Housing Board, though the post is similar to one available at CMDA, the duties and

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nature of work being performed in Housing Board are comparatively lesser. In such circumstances, we are of the view that the decision of the Division Bench relied on by the learned counsel for the appellant, is not helpful to the case on hand.

8. Apart from the above factual information, it is also relevant to note that when the petitioner wanted to go back to CMDA, that was not acceptable by the Housing Board and the writ petition filed by the petitioner questioning the same came to be dismissed. In such circumstances, after absorption of his service in the Tamil Nadu Housing Board, as rightly observed by the learned Judge, the pay scale prevailing in the Housing Board alone is applicable to the petitioner. In view of the factual conclusion with regard to the nature and responsibility of the duties and of the fact that the Housing Board is having a separate set of Rules and Regulations applicable to their personnel, we are unable to accept the claim of the petitioner. On the other hand, we are in agreement with the conclusion arrived at by the learned single Judge. Consequently, the writ appeal fails and the same is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Commissioner and
   Secretary to Government,
   Housing & Urban Development Dept.,
   Fort St.George,
   Chennai-600 009.

2. The Chairman cum Managing Director,
   Tamil Nadu Housing Board,
   Nandanam,
   Chennai-600 035.

+1cc to the Government Pleader Sr 62935
+1cc to Mr.K.Chelladurai, Advocate Sr 63017
+1cc to Ms. AL.Ganthimathi, Advocate Sr 62987

NG (CO)
km/21.12.

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